

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 584 of 2005

Date of decision: 6th December, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 584 of 2005

1. Bhupal Singh S/o Sri Lal Singh Jeena.
2. Smt. Jewanti W/o Sri Bhupal Singh.
3. Master Vikram Singh S/o Sri Bhupal Singh.
R/o Village Chandni Chauk,
Haldwani, District Nainital. Appellants

Versus

1. M/s Subhash Stone Products Pvt. Ltd.,
through its Managing Director,
M/s Subash Stone Products Pvt. Ltd.,
Futkua, Haldwani,
District Nainital.
2. The New India Assurance Company Ltd.,
through Divisional Manager,
Divisional Office, Haldwani,
District Nainital. Respondents

Mr. D.C.S. Rawat, Advocate for the appellants.

None for respondent No. 1.

Mr. P.C. Maulekhi, Advocate for respondent No. 2.

JUDGMENT

**Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.**

RAJEEV GUPTA, C. J.(Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / District Judge, Nainital vide Award dated 01.07.2005 passed in M.A.C.P. No. 3 of 2005.

2. The claimants, who are unfortunate parents and brother of deceased Km. Dipti Jeena, claimed compensation of Rs. 9,00,000/- (Rupees Nine Lakhs only) for her death in the motor accident on 01.01.2005 when her bicycle was dashed by the offending vehicle Dumper bearing registration No. U.A.-A4/A9181 resulting in multiple serious injuries to Km. Dipti Jeena, who succumbed to those injuries during the course of her treatment in Forest Hospital, Haldwani. The

claimants pleaded that Km. Dipti Jeena used to earn Rs. 5,000/- per month from tailoring work and tailoring classes.

3. The owner and the insurer of the offending vehicle Dumper contested the claim and denied their liability to pay compensation to the claimants. The owner took the plea that deceased Km. Dipti Jeena herself was responsible for the accident, whereas the insurer pleaded that the Dumper was being plied in breach of the policy conditions and the driver of the Dumper was not holding a valid driving license.

4. The claimants examined P.W.1 Bhupal Singh and P.W.2 Premanand Upadhyaya in support of their claim, whereas the owner and insurer of the offending vehicle Dumper did not examine any witness in rebuttal.

5. The Tribunal, on a close scrutiny of the evidence led by the parties, held that Km. Dipti Jeena died on account of the injuries sustained by her in the motor accident on 01.01.2005; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Dumper; and the insurer of the Dumper was liable to pay compensation to the claimants.

6. As the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal assessed her income at Rs. 2,000/- per month and Rs. 24,000/- per annum on its own estimate. By deducting $\frac{1}{3}^{\text{rd}}$ of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 16,000/- per annum. By multiplying the annual dependency of Rs. 16,000/- with the multiplier of '13', the compensation was worked out to Rs. 2,08,000/-. The Tribunal, further, awarded a sum of Rs. 17,000/- under other heads and thus, a total sum of Rs. 2,25,000/- was awarded as compensation to the claimants for the death of Km. Dipti Jeena in the motor accident on 01.01.2005. The Tribunal further

directed the insurer of the offending vehicle Dumper to pay interest on the amount of compensation at the rate of 6% per annum from the date of the claim petition in the event of its failure to pay the amount of compensation to the claimants within a period of 60 days from the date of the Award.

7. Mr. D.C.S. Rawat, the learned counsel for the appellants submitted that the Tribunal has erred in not accepting the evidence led by the claimants about the income of the deceased and in assessing her income at Rs. 2,000/- per month and Rs. 24,000/- per annum only; in awarding low compensation of Rs. 2,25,000/- only; and in not awarding any interest on the amount of compensation and directing only a conditional payment of interest by the insurer of the offending vehicle Dumper in the event of its failure to pay compensation to the claimants within a period of 60 days from the date of the Award.

8. Mr. P.C. Maulekhi, the learned counsel for respondent No. 2 The New India Assurance Company Ltd., on the other hand, submitted that the Tribunal has been quite liberal in awarding substantial compensation of Rs. 2,25,000/- by selecting the higher multiplier of '13'.

9. The findings recorded by the Tribunal that Km. Dipti Jeena died on account of the injuries sustained by her in the motor accident on 01.01.2005; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Dumper; and the insurer of the Dumper was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

10. Though the claimants pleaded that Km. Dipti Jeena used to earn Rs. 5,000/- per month from tailoring work and tailoring classes, no

cogent and reliable evidence was led before the Tribunal to establish the said income of the deceased. In this state of evidence, we do not find any fault in the approach of the Tribunal in discarding the evidence led by the claimants about the income of the deceased and in assessing her income at Rs. 2,000/- per month and Rs. 24,000/- per annum on its own estimate.

11. The multiplier of '13', selected by the Tribunal, is rather on the higher side in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003) 8 SCC 731**, wherein it has been held that in those cases, where the claimants are parents of the deceased, the multiplier should never exceed '10'. As respondent No. 2 Insurance Company has not filed any appeal against the Award, not even a cross-objection in this appeal, we are not inclined to modify the multiplier selected by the Tribunal.

12. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Court should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236**, observed in paras 8 to 10:

“8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

13. The total compensation of Rs. 2,25,000/- awarded by the Tribunal to the claimants for the death of Km. Dipti Jeena in the motor accident, when examined in the context of the dicta of the Apex Court in the cases of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** (supra) and **Manju Devi and another Vs. Musafir Paswan and another** reported in **2005 (1) TAC 609 (SC)**, we are satisfied, is just and proper compensation in the facts and circumstances of the present case.

14. Thus, we do not find any scope for enhancement of the compensation awarded by the Tribunal either on account of the income of the deceased or the claimants' dependency assessed by the Tribunal or the multiplier selected.

15. The Tribunal, certainly, has fallen into error in not awarding any interest on the amount of compensation. By directing only a conditional payment of interest in the event of insurer's failure to pay compensation to the claimants within a period of 60 days from the date of the Award, the claimants have been deprived of the amount of interest, which was otherwise payable to them. With a view to avoid any possible delay in the computation of the amount of interest by the

Claims Tribunal and any possible dispute between the parties about the period for which the claimants should get interest, we deem it proper to quantify the amount of interest ourselves. The accident, in the present case, took place on 01.01.2005 and the claim petition was filed before the Tribunal on 19.01.2005. The impugned Award was passed on 01.07.2005 and the claimants received the amount of compensation awarded by the Tribunal on 24.09.2005. Taking all the above relevant factors into consideration, we quantify the amount of interest at Rs. 10,000/- (Rupees Ten Thousand only).

16. For the foregoing reasons, the appeal filed by the claimants for enhancement of the compensation is allowed in part. While maintaining the amount of compensation awarded by the Tribunal at Rs. 2,25,000/-, respondent No. 2 The New India Assurance Company Ltd. is directed to pay a sum of Rs. 10,000/- (Rupees Ten Thousand only) to the claimants as Interest on the amount of compensation. The Insurance Company is further directed to deposit the sum of Rs. 10,000/- before the concerning Claims Tribunal within a period of two months from today.

17. No order as to costs.

(J.C.S. Rawat, J.)
06.12.2006

(Rajeev Gupta, C.J.)
06.12.2006

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